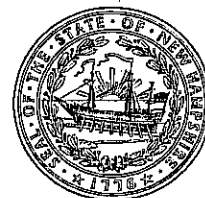




The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**



**Thomas S. Burack, Commissioner**

January 21, 2009

The Honorable Mary R. Cooney, Chairman  
Municipal and County Government  
Legislative Office Building, Room 305  
Concord, NH 03301

Re: HB 60, relative to large groundwater withdrawals

Dear Chairman Cooney:

Thank you for the opportunity to comment on HB 60, which would allow municipalities to enact ordinances and regulations affecting groundwater withdrawals.

The Department of Environmental Services (DES) opposes HB 60 in part because the existing Commission to Study Issues Relative to Groundwater Withdrawals (the "Groundwater Commission") is in the process of evaluating the role of municipalities in large groundwater withdrawal permitting, as directed by the Legislature by enactment of HB 1353 in 2008. We recommend that this work be allowed to be completed before the Legislature considers further changes to the municipal role in the permitting of groundwater withdrawals.

In 1998, the Groundwater Protection Act, RSA 485-C, was amended to require that new large groundwater withdrawals (withdrawals exceeding 57,600 gallons over any 24-hour period) obtain a permit from DES to ensure that no unmitigated impacts occur to surrounding water resources and water users. Prior to enactment of RSA 485-C, there was no clear authority to regulate large groundwater withdrawals at either the state or municipal level. RSA 485-C established DES as the permitting authority while recognizing the need for a unique role for municipalities, which the Legislature has improved over the years. In fact, since 1998, the RSA 485-C has been strengthened by three significant amendments that have in part included the addition of clearer requirements for municipal input into the state permitting process and expanded the public hearing requirements for permit applications. Through this history of improvement, New Hampshire's large groundwater withdrawal permitting program has evolved to become among the most comprehensive in the country.

Since its inception, the Groundwater Commission has made a number of constructive recommendations that have been implemented by DES and the Legislature to improve the program. This role continues in 2009 at the direction of the Legislature to include further consideration of the local government role in the permitting process for large groundwater withdrawals. Specifically, during the 2008 legislative session, through enactment of HB 1353, the Groundwater Commission was directed by the Legislature to accomplish the following by November 30, 2009:

DES Web site: [www.des.nh.gov](http://www.des.nh.gov)

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

Telephone: (603) 271-3503 • Fax: (603) 271-2982 • TDD Access: Relay NH 1-800-735-2964

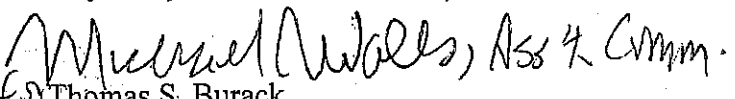
***"The commission shall also study criteria, including public benefit, for the granting of large water withdrawals other than those of RSA 485-C and RSA 485-A. Consideration of this issue shall include appropriate roles for municipalities in the permitting and regulation of large groundwater withdrawals and include input from municipalities and other appropriate entities....."***

The work of the Groundwater Commission is well underway towards this end and, we believe, should be completed before other statutory changes concerning the role of municipalities are made by the Legislature.

Finally, we also have concerns that HB 60 does not recognize the complex legal issues that exist involving the rights of property owners to reasonably use groundwater. Since 1998, the Legislature and DES have carefully crafted technical criteria and procedures to establish if a proposed large groundwater withdrawal is reasonable that consider both property owners rights, the rights of other water users and public benefit. We are concerned that HB 60 could disrupt this balance, and move municipalities back to the pre-1998 situation in which there was questionable, and potentially conflicting, legal authority over groundwater withdrawals. Therefore, we also recommend that you consider having discussions with both the Department of Justice and the Local Government Center concerning potential legal issues associated with municipal regulation of groundwater use as part of your deliberations on HB 60.

Please feel free to call me at 271-2958, or Sarah Pillsbury at 271-1168, if you have any questions or need additional information.

Very Truly Yours,

  
for Thomas S. Burack  
Commissioner

cc: Representative Garrity